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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,724	11/19/2003	Jerry M. Hoover	021983-000100US	8688
20350	7590	02/28/2006	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			WATSON, ROBERT C	
			ART UNIT	PAPER NUMBER
			3723	

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/717,724

Applicant(s)

HOOVER, JERRY M.

Examiner

Robert C. Watson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4 and 6-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 6-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Judson in view of Lucan.

Judson shows a weed pulling tool. Extending from the handle is a first flat plate A. Towards the ends of the flat plate is a second slightly curved plate. A V-shaped groove extends from the end of the second plate into the first plate (as viewed to the right of the handle in Figures 1 and 2 in Judson). The V-shaped notch is considered to be "blunt" since "blunt" is a relative term. The drawings do not show the notch to be sharpened. The angle between the first and second plates is seen to be between 10 and 50 degrees or approximately 30 degrees. Any deviation therefrom is no more than obvious matter of design choice absent a showing of criticality for this feature.

Lucan teaches that a weed pulling tool may have first and second plates which are both flat.

To make the second plate in Judson flat would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Lucan. One of ordinary skill in the art would have been motivated to do this in order to simplify the construction of the tool.

Claims 1-2 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Judson in view of Lucan supra taken with Davis.

Davis teaches that the weeding tool may have a narrow gap at the inner end of the V-shaped notch.

To provide a narrow gap at the end of the V-shaped notch *supra* would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Davis. One of ordinary skill in the art would have been motivated to do this in order to better grip the weed.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Judson in view of Lucan *supra* taken with Lamp.

Lamp shows a weed removing tool wherein the lateral sides of the plate define sharpened edges.

To provide sharpened edges on the lateral sides of the plate in the above applied structure would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Lamp. One of ordinary skill in the art would have been motivated to do this in order to prevent the tool from sinking in the soil as it is used.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Judson in view of Lucan and Davis *supra* taken with Lamp.

Lamp shows a weed removing tool wherein the lateral sides of the plate define sharpened edges.

To provide sharpened edges on the lateral sides of the plate in the above applied structure would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Lamp. One of ordinary skill in the art would

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have been motivated to do this in order to prevent the tool from sinking in the soil as it is used.

Applicant's remarks have been given careful consideration. Applicant has amended the claims to recited that the tool is a "weed puller" apparently in an attempt to distinguish applicant's tool from a hoe. This amendment has no merit since the disclosures of the references titled "hoe" recited that the hoe is for pulling weeds also. Weed pulling implements having a handle with a plate that extends from the handle with another plate at an obtuse angle, having blunt V-shaped notches with narrow gaps at the inner end, wherein the plates are at an obtuse angle of between 10 and 50 degrees are well known and obvious. Applicant's remarks make reference to a document entitled "DVD" however the examiner was unable to find such a document in the electronic file. The various evidences of commercial success are noted. However, the claims are nonetheless found to be obvious over the references. Many tools with V-shaped notches with obtuse plates appear to be successful in removing weeds.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert C. Watson whose telephone number is 571 272-4498. The examiner can normally be reached on Mon. - Thurs. , 5:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail III can be reached on 571 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rcw


ROBERT C. WATSON
PRIMARY EXAMINER